

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOSHUA HOWARD,

Plaintiff,

v.

Case No. 21-cv-273-pp

CAPT. BAUMANN, *et al.*,

Defendants.

**ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR
RECONSIDERATION AND MOTION FOR ORDER (DKT. NO. 8) AND
REQUIRING PLAINTIFF TO PAY AN INITIAL PARTIAL FILING FEE**

Plaintiff Joshua Howard has filed a motion asking the court to reconsider its April 13, 2021 order dismissing his case for failure to pay the initial partial filing fee. Dkt. No. 8. The plaintiff states that he never received the court's order assessing the initial partial filing fee and he asks the court to reopen the case and set a new deadline to pay the initial partial filing fee. *Id.* The court notes that it sent the order to the plaintiff at Green Bay Correctional Institution, where it has sent all the other orders in all the plaintiff's other cases, and the order did not come back to the court by return mail.

The court will grant the plaintiff's request, in part. *See Bell v. Kay*, 847 F.3d 866, 868 (7th Cir. 2017) (plaintiff cannot be faulted for missing deadline if he did not receive court's order). The court will set a new deadline for the plaintiff to pay the initial partial filing fee and, if he timely pays that fee, the court will reopen the case and screen the complaint.

The court **GRANTS IN PART** the plaintiff's motion for reconsideration and motion for order. Dkt. No. 8.

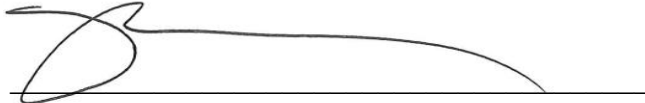
The court **ORDERS** that if the plaintiff wishes to continue with this lawsuit, then on or before the end of the day on **June 18, 2021**, he must forward to the Clerk of Court the sum of **\$6.64** as an initial partial filing fee, or file a letter informing the court why he is not able to pay the assessed amount. The plaintiff must send the fee (or a letter explaining why he cannot do so) in time for the court to *receive* it by the end of the day on June 18, 2021. If the plaintiff does not have enough money in his regular account to pay the initial partial filing fee, he is responsible for arranging with prison staff to pay the remainder of the filing fee from his release account. The language of 28 U.S.C. §1915(b)(1) suggests that a prisoner may use his release account to pay an initial partial filing fee only if he does not have sufficient funds in his regular account. See Carter v. Bennett, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). If the court receives the initial partial filing fee, it will vacate the April 13, 2021 order of dismissal, reopen the case and review the complaint to determine whether to grant the plaintiff leave to continue *in forma pauperis*. The court also will review the complaint to determine whether the lawsuit is frivolous or malicious or fails to state a claim upon which relief can be granted; if the court concludes that the complaint does not meet this standard, the court will dismiss the complaint.

If the court does not receive either the initial partial filing fee of \$6.64 or a letter explaining why the plaintiff cannot pay it by the end of the day on **June**

18, 2021, the court will not vacate the April 13, 2021 order of dismissal and this case will remain closed.

Dated in Milwaukee, Wisconsin this 20th day of May, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
Chief United States District Judge